IN THE HON'BLE CHHATTISGARH HIGH COURT AT BILASPUR

W.P.NO. 3079 /2003 (S.B.)

PETITIONERS

1. Murlidhar Verma aged about 75 years son of Shri Dhanaram Verma,

2. Jaiprakash, aged about 25 years son of shri Murlidhar Verma.

3. Lekhchand aged about 22 years, son of Shri Murlidhar Verma.

4. Rudrapratap aged about 15 years (minor) through : natural guardian father Shri Murlidhar Verma son of Shri Dhanaram Verma.

5. Smt Kunjbati Ghasta, aged about 46 years, wife of Shri Murlidhar

All are agriculturist and resident of village Belargondi, P.H.N. 50 Municipal Corporation Dhuriya, Tah and Distt. Rajnandgaon (C.G.)

VERSUS

RESPONDENTS

1 Smt Budabai, aged about 50 years Widow of Late Nageshwar Verma

2. Chinta Haran alias Kriparam aged about 32 years son of Late Nageshwar Verma.

3. Ramkrishna, aged about 55 years son of Shri Murlidhar Verma,

Sl.No. 1 to 3 are resident of village Sebantapara Dongargaon, Tah

(2)

Dongargaon, Distt. Rajnandgaon (Chhattisgarh).

4. The State of Chhattisgarh, through : The District Collector, Rajnandgaon (Chhattisgarh).

WRIT PETITION UNDER ARTICLES 227 OF THE CONSTITUTION OF INDIA.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.No. 3079 सन् 2003 / 2004

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

12/04/2005

Shri P.K.C. Tiwari, Sr. Counsel with Shri Shashi Bhushan, counsel for the petitioner.

Shri Anup Majumdar, counsel for respondent No. 1 to 3.

Shri Vivek Sharma, P.L. for the State/respondent No.4.

Heard.

The petitioner has preferred this petition as he is aggrieved by the impugned order dated 03/09/2003 passed in Civil Suit No. 21-A/2002-03 by Second Civil Judge Class II, Rajnandgaon and by which the opportunity of the petitioner/defendants to file written statement has been closed as per provisions of Order 8 Rule 10 of CPC as the written statement was not filed by the defendants even after expiry of 90 days.

The case of the petitioner is that after service of notice, the petitioners/defendants moved an applicant under Order 7 Rule 11 of CPC stating therein that the plaintiff No.3 who is the son of defendant No.1 is a person of unsound mind and the suit has been filed in collusion with one Kushiram and Vibhutibhushan through the mentally retarded plaintiff. It was also stated that the plaintiff No.3 who is mentally retarded since then aged 13-14 years and as such the suit was incompetent for want of compliance of the provisions of Order 32 of the CPC.

In reply to the said application on behalf of the plaintiffs/respondents the above averments were not categorically denied and stated that for the protection of the interest of the person of unsound mind, the suit is competent as the suit has not been filed against the interest fo the person of unsound mind. After filing of the reply, the case was adjourned for 11/08/2003, 21/08/2003 and 03/09/2003 for arguments on the above application of the defendant. On 03/09/2003, the plaintiff moved an application under Order 8 Rule 10 of CPC stating therein that the defendants have not submitted their written statement within the stipulated period as per Order 8 Rule 1 of CPC and in view of the above, the opportunity of

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आदेश पत्रक

मामला क्रमांक ...W.P. No. 3079/03... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

filing written statement be closed under Order 8 Rule 10 of CPC. The Court below by the impugned order allowed the application of the plaintiffs and closed the opportunity of filing return statement.

Learned counsel for the petitioner submits that the learned trial Judge has committed illegality in as much as without deciding the objection preferred by the petitioners under Order 7 Rule 11 of CPC and without following the provisions of Order 32, has allowed the application of the plaintiff considering that the suit in question was properly constituted suit and since the defendant did not file the written statement within the stipulated period, the mandatory provision of Order 8 Rule 10 of CPC was effected and the defendant could not be allowed to file written statement.

It is argued that unless the Court below after conducting the enquiry reaches to the conclusion that the plaintiff No.3 who is alleged to be a person of unsound mind was competent to file the Civil Suit with the help of the next friend no validly constituted suit was before the Court below and learned Civil Judge ought to have taken off the file. It was the duty of the Court below to conduct enquiry under Order 32 sub rule 2 of CPC.

On the other hand learned counsel for the respondent submits that it was not open to the Court below to extend the date under Order 8 Rule 1 of CPC for filing written statement beyond the period of 90 days and there is no illegality in the impugned order because the defendant was required to file written statement within 30 days from service of summons and in this case even after 90 days of the service of summons, written statement was not filed. Thus, the petitioners themselves have given up their right to file the written statement.

In support of the contention, counsel for the petitioner relies upon the judgment of this High Court reported in ***2005 (1) C.G.L.J. Smt. Anuradha Dubey Vs. Prasen @ Laxmikant Dubey 26*** wherein it has been held that where the defendants fail to file written statement within a stipulated period of 30 days under Order 8 Rule 1 of CPC and does not make any prayer for extending time

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

for filing final written statement, the opportunity of filing written statement is to be closed and the Court has no inherent power to extend the time to file written statement beyond the period of 90 days.

I have heard learned counsel for the parties and I have gone through the judgment and the documents available on record. From bare perusal of the application under Order 7 Rule 11 of CPC and reply to the said application by the respondents it is evident that there was a dispute before the Court below regarding the competency of the plaintiff No.3 to file the said suit and according to me, the Court below was duty bound to decide the same first before directing the defendants to file written statement as the allegation that the plaintiff No.3 is a person of unsound mind has not been specifically denied and unless this fact is decided by conducting an enquiry under Order 32 Rule 2 of CPC, the period of limitation for filing written statement does not commence.

On the aforesaid discussion, the petition of the petitioner is allowed and the impugned order is set aside with a direction to the Court below to decide the application under order 7 Rule 11 of CPC particularly regarding the unsoundness of mind of the plaintiff No.3 and after such enquiry record a finding and thereafter proceed further in the suit.

With the above said observation, the ~~suit is dismissed~~ petition is disposed of

At this juncture, it is pointed out by the counsel for the respondents that the application of the petitioner under Order 7 Rule 11 of CPC was dismissed subsequently on 17/10/2003 by recording a finding that the plaintiff No.3 is not a person of unsound mind. Be that as it may, the Court shall provide three weeks' time to the defendant to file written statement.

Sd/-
Dhirendra Mishra
Judge

(पीछे देखिये)